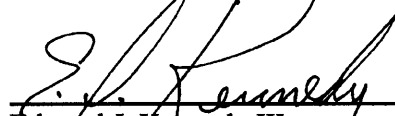


sought by the present subpoena to the extent that they include confidential communications between the patient and a licensed psychiatrist/psychologist, which are protected from disclosure by law. *Ala. Code* §34-26-2 (1975). Further, Hospital respectfully directs the courts' attention to the decision of the Supreme Court of Alabama, which was prompted by a Petition for Writ of Mandamus by a facility that had twice been ordered to produce patient-psychotherapist records. In *Ex parte Western Mental Health Center, a division of the Jefferson County Board of Health (In re: P.H. v. James B. Koikos and the Bright Star Restaurant, Inc., and In re: M.S. v. James Kevin Stewart et al.)*, 884 So.2d 835 (Ala. 2004), the Court reaffirmed the very limited circumstances in which the privilege conferred by *Ala. Code* § 34-26-2, may be considered waived. The Court noted that there are five exceptions to the psychotherapist-patient privilege: (1) child custody cases in which the mental state of a parent is at issue; (2) a criminal case plea of insanity; (3) psychiatric commitment proceedings; (4) communications relevant in proceedings to hospitalize a patient for mental illness; and (5) a case involving breach of duty arising out of the psychotherapist-patient privilege. The Court said further, "There is no implication in the language of §34-26-2 that the legislature intended an exception to the privilege where the issue of a party's mental condition is raised in a civil proceeding." Clearly, the burden of showing that privileged records are necessary to a party's case rests with the party seeking the privileged records and requires such a finding by the court.

3. Hospital is unaware that said patient, **Daniel Kelley**, has waived the privilege conferred by *Ala. Code* § 34-26-2, and for the foregoing reasons, must object to the production of the records sought by the present subpoena.

Wherefore, the premises considered, movant asks this court, to enter an order quashing the present subpoena to the extent that they include privileged documents, as described in paragraph three, herein.

Respectfully submitted,)



Edward J. Kennedy III
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(205/ 934-3474)

NOTICE OF HEARING

Movant does not request a hearing on the present Motion unless it is deemed to be necessary by the court.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2007, I electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kristi A. McDonald
McDonald & McDonald
1005 Montgomery Highway
Birmingham, AL 35215

/s/ _____
Edward J. Kennedy III